IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RFA NO.297 of 1998.
Judgment reserved on : 26.9.2007.
Date of decision: October 5th, 2007.

M/s Prakash Time Centre. ……. Appellant.

Vs.

M/s Purewal and Associates Limited. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?No .

For the appellant: Mr. Bhupender Gupta, Sr. Advocate with
Ms. Charu Gupta Advocate and
Mr. Praneet Gupta, Advocate.

For the respondent: Mr. G.D. Verma, Sr. Advocate, with
Mr. Romesh Verma, Advocate.

Surinder Singh, J:

The defendant has felt aggrieved and dissatisfied by the judgment and decree passed by the learned District Judge, in civil Suit No.7-S/1 of 1996 dated 11.6.1998, whereby the suit filed by the plaintiff is decreed, for a sum of Rs.3,82,269/- with costs and interest at the rate of 12% per annum from the date of filing of the suit till its payment.

In brief, the facts of the case are that the respondent, **hereinafter called the plaintiff,** had filed a suit for recovery of Rs.4,48,877/- against the appellant, **hereinafter called the defendant**. In nut-shell, the case of the plaintiff, a registered company, has been that they are in manufacturing of the watch components at Jubber in district Solan, whereas, the defendant is doing its business at Bangalore. The plaintiff had supplied some watch components on the request of the defendant, between July 3, 1992 to December 23,1993. under the registered post parcels, of the different invoices, but out of the total bills of Rs.4,20,420/- the defendant only made the payment of Rs.1,52,880/- plus Rs.9,940/-,

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

(total amounting to Rs.1,62,820/-) and the balance of Rs.2,67,540/- remained unpaid. Despite notice, the defendant did not make the payment, nor supplied the 'C' form. Therefore, the plaintiff claimed the aforesaid balance including sales tax to the tune of Rs.34,467/- with interest at the rate of 18% per annum.

The defendant had resisted and contested the claim of the plaintiff and questioned the locus-standi to file the suit and also disputed the jurisdiction of the court to entertain and determine the suit, by preliminary objections and on merits submitted that the plaintiff company represented by its Sales Executive and their Marketing Executive used to approach the defendant and other businessmen dealing with watch items in Bangalore every month and they used to take orders and the goods were being supplied to them at Bangalore. The payments were made as per the invoices to the plaintiff's representatives. There was no agreement to supply the `C' Form, as alleged. The defendant has admitted having supplied the watch components from July,1992 to December, 1993 to them, but these goods were purchased by the defendant concern from New Delhi, through post parcel. There is no delivery challan of the goods supplied under the invoices, but certain orders were placed to the plaintiff at Bangalore, for the supply of the material to the plaintiff during the aforesaid period and after the receipt of the goods, the defendant had promptly made the payments. The goods so supplied under the aforesaid invoices were alleged to be defective, consequently, the defendant returned these goods to the plaintiff, but the price paid by them was not refunded and claimed Rs.3,47,518.77 paise from the plaintiff with interest.

In replication, the case of the defendant was denied and even the paras of the plaint were reasserted.

On the pleading of the parties, the trial court has framed the following issues:-

(1) Whether the jurisdiction of the court to try the suit is barred? OPP.

(2) Whether the plaintiff has locus standi to file the suit? OPP.

(3) Whether the plaintiff Company supplied watch movements Calibre P.A.33 or any other watch components material to defendants with effect July 3, 1992 to December 23, 1993? OPP.

(4) If issue No.3 is proved what was the value and costs of the watch movement components and other material supplied by the plaintiff company to the defendants? OPP.

(5) Whether the plaintiff is entitled to recover Rs.4,48,877.00 from the defendants for the supply of the subject matters of issue No.3, above? OPP.

(6) Relief.

Plaintiff had produced its evidence to prove the issues, the initial onus of which was upon them. The defendant despite repeated opportunities did not produce their evidence, accordingly, their evidence was closed by the order of the court and the learned trial court heard the matter and partly decreed the suit, with interest.

Feeling aggrieved and dissatisfied by the impugned judgment and decree, the defendant filed the instant appeal, on the grounds that the learned trial court did not appreciate the evidence on record properly and the evidence of the defendant was closed without there being proper and good reasons. It also lacked the jurisdiction to try and determine the suit and even otherwise, there is no material available on the record, on the basis of which the suit could have been decreed.

I have heard the learned counsel for the parties and have carefully gone through the evidence on record.

The perusal of the zimni orders shows that issues were framed in the trial court on 8.4.197 and the plaintiff examined PW1 Raj Kumar Agarwal, General Manager of the Company and M.K. Mandal, Accounts Officer as PW2 and PW3 Anil Kumar. The plaintiff closed the evidence on 22.10.1997, and thereafter the matted was fixed for the evidence of the

defendant on 29.11.1997. The defendant was required to file the list, PF and DM etc. within seven days, but neither this order was complied with nor their witnesses were present and thereafter, it was fixed for 9.1.1998, but again on that date, evidence was not produced and the adjournment was allowed subject to the payment of costs of Rs.100/- and the case was adjourned. Thereafter, the case was adjourned many times till 11.6.1998, but the defendant failed to comply with the orders of the court and did not produce the evidence, hence, the evidence of the defendant was closed for non-compliance of the orders of the court under Order 17 Rule 3 of the Code of Civil Procedure and the suit was decreed, as stated above.

The contention of the learned counsel for the defendant that the learned trial court did not give proper and reasonable opportunity to the defendant and closed its evidence in haste manner, is absolutely incorrect, therefore, this argument is rejected.

I have reappraised the evidence on record on merits of the case. According to Raj Kumar Agarwal, PW1, the defendant had ordered for the supply of watch components. The supply order was received in his office at Jubber, which falls within the jurisdiction of the district Solan and watch components were dispatched through post. PW1 aforesaid and M.L. Mandal, PW2 have stated that 13 parcels of watch components between the years 1992 to 1993 were supplied to the defendant by the plaintiff on their demand, vide invoices Ext.P-12 to Ext. P-25. These were sent by post and the receipts of the parcels were proved as Exts.P-26 to P-37. The defendant in so many words has admitted having received the watch components sent through invoices, but according to the defendant, these goods were defective and were sent back to the plaintiff. Even, in reply to the notice of demand, the defendant vide its letter Ext.P-11 though has denied having received the goods after 19.6.1993, but has clearly admitted the fact of supply of the goods to them earlier. The plaintiff has proved having sent the goods vide registered post, the address of which

was correct, thus the presumption is against the defendant. The defendant has failed to produce and rebut the evidence and prove their claim. Further, the transaction with the defendant has been shown in the books of accounts of the plaintiff, maintained in the ordinary course of business, which is a relevant evidence. The accounts of the defendant have been clearly reflected therein and the amount due has been shown, the amount of invoices were properly reflected, therefore, in view of the unrebutted evidence of the plaintiff, the learned trial court had rightly held on the evidence on record that the trial court has the jurisdiction to try and determine the suit and the plaintiff has the locus standi to file the suit and further that the plaintiff is entitled to recover the amount of 3,82,269/- with costs and interest @ 12% P.A. from the defendant from the date of filing of the suit till it is realized. Since I did not find any material to upset the issue-wise findings, consequently, the impugned judgment and decree are upheld.

Accordingly, the appeal is dismissed with costs.

October 5th, 2007. **(Surinder Singh)**
(Pds) **Judge.**